

REMARKS

I. Introduction

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-29 and 36-42 are requested to be cancelled. The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claims 30-35 will remain pending in the application.

II. Response to Issues Raised in Decision on Appeal

The Board of Patent Appeals and Interferences (BPAI) affirmed the Examiner's double patenting rejections. The BPAI also affirmed the Examiner's rejection of claims 36-40 under 35 U.S.C. §112, first paragraph, for alleged lack of written description. The BPAI did not reach the remaining rejections of the Examiner.

With respect to the Examiner's rejection of claims 30-36 for obviousness-type double patenting, the BPAI states that this rejection is upheld because "no terminal disclaimer has been filed to date in this application" (Decision on Appeal, page 4). The Examiner found claims 30-36 unpatentable for obviousness-type double patenting over claims 1-3 of U.S. Patent No. 5,914,393 ("the '393 patent")

Attached herewith is a terminal disclaimer which disclaims the terminal part of the term of any patent granted on the captioned patent application which would extend beyond the full statutory term, as shortened by any terminal disclaimer, of the '393 patent. Therefore, the rejection is moot.

With respect to the remaining rejection, Applicants have canceled claims 36-40, thus rendering the rejection of these claims moot. Applicants have also canceled claims 41 and 42 which had previously been withdrawn.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.16-§1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Jan 28, 2005
Date

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5538
Facsimile: (202) 672-5399

Michele M. Simkin
Michele M. Simkin
Attorney for Applicant
Registration 34,717